

JUDGE PATTERSON

08 CV 5540

Neil M. Zipkin (NZ 4718)
Holly Pekowsky (HP 5034)
AMSTER, ROTHSTEIN & EBENSTEIN LLP
90 Park Avenue
New York, New York 10016
(212) 336-8000
Attorneys for Plaintiff

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

----- -X
DAN-DEE INTERNATIONAL, LTD,

Plaintiff,

v.

KB TOYS (US), INC., KB TOYS, INC., AND A & T
INDUSTRIAL, INC.

Defendants.
----- -X

Civil Action No.

COMPLAINT

JURY TRIAL DEMAND

JUN 19 2008
U.S.D.C. S.D. N.Y.
CASHIERS

Plaintiff, Dan-Dee International, Ltd ("Dan-Dee") for its Complaint alleges as follows:

THE PARTIES, JURISDICTION AND VENUE

1. Plaintiff Dan-Dee is a business entity organized under the laws of Delaware, having a principal place of business at 106 Harbor Drive, Jersey City, New Jersey 07305.

2. Upon information and belief, Defendant KB Toys (US), Inc. ("KB US") is a corporation organized and existing under the laws of the State of Delaware, having a principal place of business at 100 West Street, Pittsfield, MA 01201.

3. Upon information and belief, Defendant KB Toys, Inc. ("KB") is a corporation organized and existing under the laws of the State of Delaware, having a principal place of business at 100 West Street, Pittsfield, MA 01201.

4. Upon information and belief, Defendant A & T Industrial, Inc. ("A & T") is a corporation organized and existing under the laws of the State of Georgia, having a principal place of business at 4205 Trotters Way, 4, Alpharetta, Georgia (collectively, KB (US), KB and A & T shall be referred to as "Defendants").

5. Defendants are transacting and doing business within this Judicial District and are subject to the jurisdiction of this Court pursuant to the laws of this State and Rule 4 of the Federal Rules of Civil Procedure. By means of illustration only, Defendants KB (US) and KB own and/or operate retail stores within this judicial district, and, upon information and belief, have offered for sale and sold the Infringing Reindeer, as hereinafter defined, at one or more of their retail stores within this judicial district. Upon information and belief, products manufactured by Defendant A & T, including the Infringing Reindeer, as hereinafter defined, have been offered for sale and sold within this judicial district.

6. This Court has jurisdiction over these claims pursuant to 28 U.S.C. §§ 1331 and 1338.

7. Venue is proper pursuant to 28 U.S.C. 1391.

COUNT I

COPYRIGHT INFRINGEMENT

8. This claim arises under the Copyright Laws of the United States, 17 U.S.C. § 101 *et seq.*

9. Dan-Dee designs, manufactures and sells a variety of high quality children's toys and playthings, including but not limited to plush toys, which generally consist of original and distinctive designs.

10. Among the many plush toys manufactured and sold by Dan-Dee is the original design of a distinctive reindeer in a Santa suit and hat with two baby reindeer on its lap (the "Reindeer").

11. The Reindeer "sings" and "dances" when a button on its left foot is pressed.

12. The Reindeer was designed by employees of Dan-Dee in 2003 in the scope of their employment as a work for hire.

13. The Reindeer is the subject of Copyright Registration No. VA 1-632-333 which issued on May 13, 2008 and is valid and subsisting.

14. Dan-Dee is the owner of the copyright in the Reindeer, which is the subject of Copyright Registration No. VA 1-632-333. Copies of Copyright Registration No. VA 1-632-333 and the deposit copy of the Registration are annexed collectively as Exhibit 1.

15. Dan-Dee has manufactured and sold the Reindeer since at least as early as 2003. Since that time, Dan-Dee has sold substantial quantities of its Reindeer to several retailers.

16. The Reindeer is a derivative work of a prior plush toy which Dan-Dee created and the copyright of which Dan-Dee owns (the "Original Reindeer").

17. The Original Reindeer was designed by employees of Dan Dee in 1999 in the scope of their employment as a work for hire.

18. The Reindeer differs from the Original Reindeer in the following respects: the Reindeer has two baby reindeer, and there have been revisions to the design of the reindeer and ornamentation.

19. Dan-Dee has separately applied to register the copyright in the Original Reindeer.

20. A copy of the Copyright Application for the Original Reindeer and the cover letter to the Copyright Office enclosing the Application and deposit copy are annexed collectively as Exhibit 2.

21. Dan-Dee will supplement its Complaint to assert the Copyright Registration for the Original Reindeer as soon as the same issues.

22. Dan Dee has manufactured and sold the Original Reindeer since at least as early as 2001. Since that time, Dan Dee has sold substantial quantities of the Original Reindeer to several retailers.

23. Dan-Dee representatives recently saw substantially identical copies of the Reindeer at one or more retail stores owned/operated by Defendants KB (US) and KB. The infringing reindeer each bore a sticker identifying Defendant A & T as the manufacturer ("the Infringing Reindeer"). A photograph of the Infringing Reindeer is annexed as Exhibit 3.

24. The Infringing Reindeer, like Dan-Dee's Reindeer, sings and dances when a button on its left foot is pressed.

25. A side-by-side photograph of the Dan-Dee Reindeer and the Infringing Reindeer is annexed as Exhibit 4.

26. Upon information and belief, since at least as early as the Christmas 2007 wholesale selling season, Defendants copied Dan-Dee's Reindeer and/or Original Reindeer by importing, manufacturing, offering for sale and selling and/or causing to be manufactured, distributed, advertised, promoted, offered for sale and/or sold the Infringing Reindeer.

27. Defendants' sale of the Infringing Reindeer is in competition with Dan-Dee and the acts alleged herein have been without the permission, license or consent of Dan-Dee.

28. Defendants' acts alleged herein constitute violations of the exclusive rights of Dan-Dee under 17 U.S.C. §§ 106, 113 and 602 and constitute infringement under 17 U.S.C. § 501.

29. Upon information and belief, Defendants are sophisticated businesses and, well prior to the wholesale selling season for Christmas 2007, were either aware of Dan-Dee's copyright in the Reindeer and/or the Original Reindeer, or acted with reckless disregard as to whether Dan-Dee had a copyright in the Reindeer and the Original Reindeer. Therefore, upon information and belief, Defendants' infringement was not innocent, and was, in fact, knowing and willful.

30. Dan-Dee has suffered and will continue to suffer damage to its business, including loss of its reputation for exclusivity for the distinctive design of its Reindeer and Original Reindeer, as well as loss of sales in an amount not yet known but believed to be in excess of \$500,000.

31. Defendants' continuing acts are damaging to Dan-Dee in a manner for which Dan-Dee has no adequate remedy at law.

THEREFORE, Dan-Dee requests judgment against Defendants as follows:

I. A. Defendants and their officers, agents, servants, employees and attorneys and all those in active concert and participation with them, be preliminarily and permanently enjoined from:

- (i) manufacturing, reproducing, displaying, publishing, vending, distributing, selling, promoting, importing, and/or advertising, assisting, inducing, or contributing to the manufacturing, reproducing, displaying, publishing, vending, distributing, selling, promoting, and/or advertising any product that contains substantial material copied from and substantially similar to the copyrighted Reindeer and/or the Original Reindeer, including, without limitation, the Infringing Reindeer; and
- (ii) otherwise infringing the copyright in the Dan-Dee Reindeer, namely, the copyright represented by Copyright Registration No. VA. 1-632-333;

(iii) otherwise infringing the copyright in Dan-Dee's Original Reindeer, the copyright registration for which will, upon information and belief, be forthcoming;

B. During the pendency of this lawsuit Defendants be required to deliver to Dan-Dee for storage or destruction all copies of the Infringing Reindeer.

C. Defendants be required to pay to Dan-Dee such actual damages as Dan-Dee sustained in consequence of the infringements by Defendants of the copyright in the Reindeer and the Original Reindeer, to account for all gains, profits and advantages.

II. Dan-Dee have such other and further relief as the Court may deem just and proper.

Respectfully submitted,

AMSTER, ROTHSTEIN & EBENSTEIN LLP
Attorneys for Plaintiff
90 Park Avenue
New York, New York 10016
(212) 336-8000

By: 

Neil M. Zipkin (NZ 4718)
Holly Pekowsky (HP 5034)

Dated: New York, New York
June 19, 2008

JURY DEMAND

Pursuant to Fed. R. Civ. P. 38(b), Plaintiff Dan-Dee International, Ltd. hereby demands trial by jury on all issues triable by right of jury in this action.

Exhibit 1

Certificate of Registration



This Certificate issued under the seal of the Copyright Office in accordance with title 17, *United States Code*, attests that registration has been made for the work identified below. The information on this certificate has been made a part of the Copyright Office records.

Marybeth Peters

Register of Copyrights, United States of America

U.S. GOVERNMENT
PRINTING OFFICE
★ ★

Registration Number:

VA 1-632-333

Effective date of
registration:

May 13, 2008

Title

Title of Work: Toy with Babies

Nature of Work: Stuffed Toy

Completion/Publication

Year of Completion: 2003

Date of 1st Publication: February 15, 2003

Nation of 1st Publication: Hong Kong

Author

Author: Dan-Dee International, Ltd.

Author Created: 3-Dimensional sculpture

Work made for hire: Yes

Citizen of: United States

Anonymous: No

Pseudonymous: No

Copyright claimant

Copyright Claimant: Dan-Dee International, Ltd.

106 Harbor Drive, Jersey City, NJ 07065

Limitation of copyright claim

Material excluded from this claim: Large Reindeer and Bear designs

Previously registered: No

New material included in claim: Addition of baby animals and revisions to animal designs and ornamentation

Certification

Name: Neil M. Zipkin, Esq., authorized agent of Dan-Dee International, Ltd.

Date: May 8, 2008

IPN#:



* *

Registration #: VA0001632333

Service Request #: 1-62415223

Amster, Rothstein & Ebenstein LLP
Neil M. Zipkin, Esq.
90 Park Avenue
New York, NY 10016



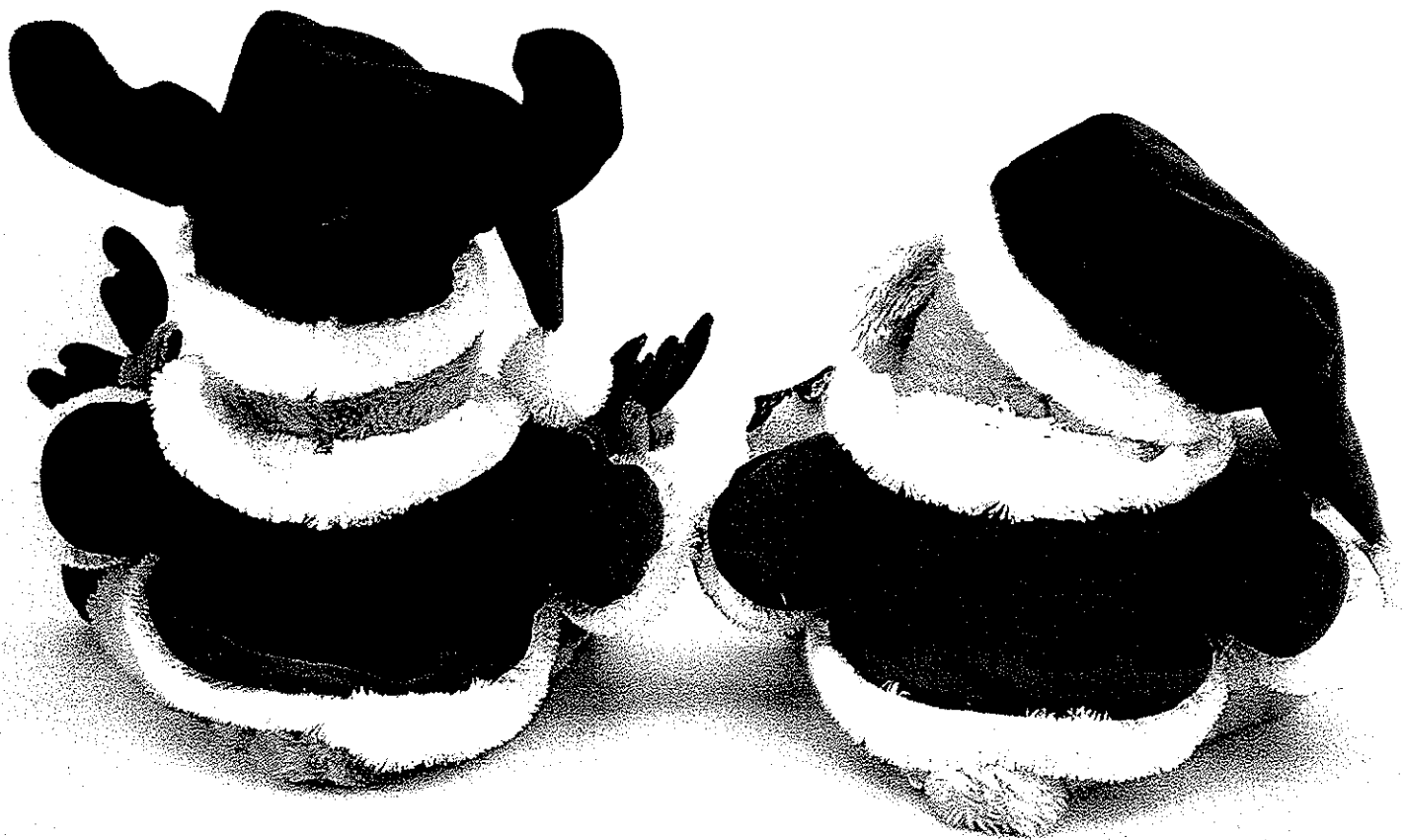












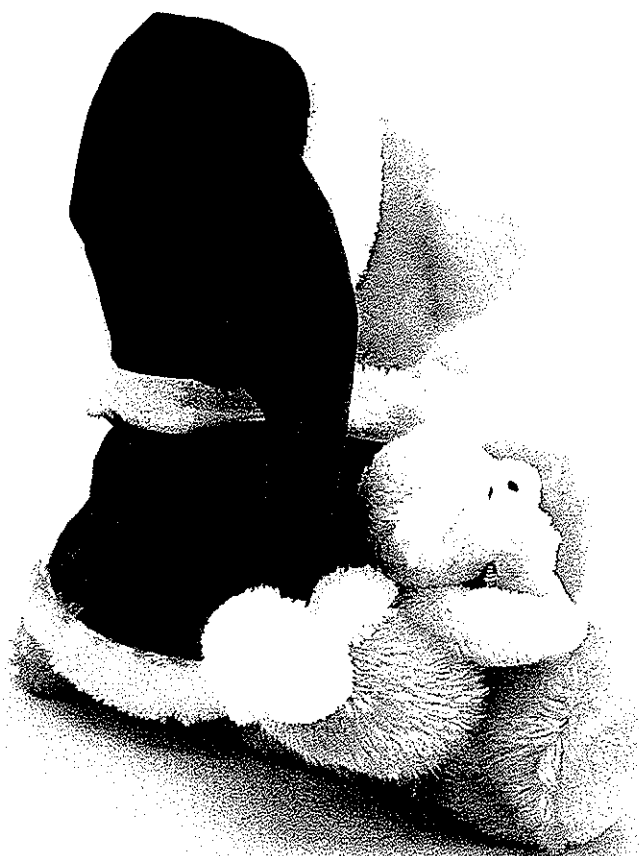




Exhibit 2

AMSTER ROTHSTEIN & EBENSTEIN LLP

Intellectual Property Law

90 Park Avenue
New York NY 10016

Main 212 336 8000

Fax 212 336 8001

Web www.arelaw.com

Partners
Morton Amster
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Brett M. Pinkus*
Benjamin Charkow
Jeffrey Shieh

*Not admitted in New York

May 9, 2008

Via Express Mail

Library of Congress
Copyright Office
101 Independence Avenue, S.E.
Washington, D.C. 20559-6000

Re: New U.S. Copyright Application
Author - Dan-Dee International Limited
Title of Work: REINDEER
Our File: 28550/673 1 *ju*

Neil M. Zipkin

Direct 212 336 8120

E-mail nzipkin@arelaw.com

"Express Mail" mailing label No.: EV 592511806 US
Date of Deposit: May 9, 2008

I hereby certify that this paper or fee is being deposited with the United States Postal Service "Express Mail" service on the date indicated above and is addressed to: Library of Congress, Copyright Office, 101 Independence Avenue, S.E., Washington, D.C. 20559-6000.

Name: Judith N. Steinsapir

Signature: *Judith N. Steinsapir*

Sir:

Enclosed for filing relative to the above-identified Application, please find the following:

1. Application Form VA;
2. one (1) photograph depicting the stuffed toy that is the subject of the Application;
3. a check in the amount of Forty-Five Dollars (\$45.00) for payment of the Application fee; and
4. a return receipt postcard.

In the event that the enclosed fee is insufficient, please charge any deficiency to the deposit account of the firm of Amster, Rothstein & Ebenstein, Deposit Account No. DA 55069. A further copy of this letter is enclosed.

Please stamp the enclosed postal card and return the same to the attention of the undersigned to serve as a receipt for our records; and, forward the Certificate Of Copyright Registration as soon as it issues.

EXAMINED BY _____

FORM VA

CHECKED BY _____

☐ CORRESPONDENCE☐ YesFOR
COPYRIGHT
OFFICE
USE
ONLY

DO NOT WRITE ABOVE THIS LINE. IF YOU NEED MORE SPACE, USE A SEPARATE CONTINUATION SHEET.

PREVIOUS REGISTRATION Has registration for this work, or for an earlier version of this work, already been made in the Copyright Office?☐ Yes ☒ No If your answer is "Yes," why is another registration being sought? (Check appropriate box.) ▼a. ☐ This is the first published edition of a work previously registered in unpublished form.b. ☐ This is the first application submitted by this author as copyright claimant.c. ☐ This is a changed version of the work, as shown by space 6 on this application.

If your answer is "Yes," give: Previous Registration Number ▼

Year of Registration ▼

DERIVATIVE WORK OR COMPILATION Complete both space 6a and 6b for a derivative work; complete only 6b for a compilation.a. **Preexisting Material** Identify any preexisting work or works that this work is based on or incorporates. ▼b. **Material Added to This Work** Give a brief, general statement of the material that has been added to this work and in which copyright is claimed. ▼**DEPOSIT ACCOUNT** If the registration fee is to be charged to a Deposit Account established in the Copyright Office, give name and number of Account.

Name ▼

Account Number ▼

CORRESPONDENCE Give name and address to which correspondence about this application should be sent. Name/Address/Apt/City/State/Zip ▼Neil M. Zipkin, Esq. / Amster, Rothstein & Ebenstein LLP
90 Park Avenue, New York, NY 10016

Area code and daytime telephone number (212) 336 8000

Fax number (212) 336 8001

Email ptodocket@arclaw.com

CERTIFICATION* I, the undersigned, hereby certify that I am the

check only one ▶

☐ author☐ other copyright claimant☐ owner of exclusive right(s)☒ authorized agent of Dan-Dee International, Ltd.

Name of author or other copyright claimant, or owner of exclusive right(s) ▲

of the work identified in this application and that the statements made by me in this application are correct to the best of my knowledge.

Typed or printed name and date ▼ If this application gives a date of publication in space 3, do not sign and submit it before that date.

Neil M. Zipkin, Esq.

Date May 9, 2008

Handwritten signature (X) ▼

X

Certificate
will be
mailed in
window
envelope
to this
address:

Name ▼

Neil M. Zipkin, Esq., / Amster, Rothstein & Ebensteni LLP

Number/Street/Apt ▼

90 Park Avenue

City/State/ZIP ▼

New York, NY 10016

YOU MUST:

- Complete all necessary spaces
- Sign your application in space 8

**SEND ALL 3 ELEMENTS
IN THE SAME PACKAGE:**

1. Application form
2. Nonrefundable filing fee in check or money order payable to *Register of Copyrights*
3. Deposit material

MAIL TO:Library of Congress
Copyright Office
101 Independence Avenue SE
Washington, DC 20559-6000

*17 USC §506(e): Any person who knowingly makes a false representation of a material fact in the application for copyright registration provided for by section 409, or in any written statement filed in connection with the application, shall be fined not more than \$2,500.

Copyright Office fees are subject to change. For current fees, check the Copyright Office website at www.copyright.gov, write the Copyright Office, or call (202) 707-3000.

Form VA
For a Work of the Visual Arts
UNITED STATES COPYRIGHT OFFICE

REGISTRATION NUMBER

VA VAU
EFFECTIVE DATE OF REGISTRATION

Month Day Year

DO NOT WRITE ABOVE THIS LINE. IF YOU NEED MORE SPACE, USE A SEPARATE CONTINUATION SHEET.

1

Title of This Work ▼

Reindeer

NATURE OF THIS WORK ▼ See instructions

Stuffed Toy

Previous or Alternative Titles ▼

Publication as a Contribution If this work was published as a contribution to a periodical, serial, or collection, give information about the collective work in which the contribution appeared. Title of Collective Work ▼

If published in a periodical or serial give: Volume ▼

Number ▼

Issue Date ▼

On Pages ▼

2

NOTE

Under the law, the "author" of a "work made for hire" is generally the employer, not the employee (see instructions). For any part of this work that was "made for hire" check "Yes" in the space provided, give the employer (or other person for whom the work was prepared) as "Author" of that part, and leave the space for dates of birth and death blank.

NAME OF AUTHOR ▼

a Dan-Dee International, Ltd.

DATES OF BIRTH AND DEATH

Year Born ▼

Year Died ▼

Was this contribution to the work a "work made for hire"?

☒ Yes☐ No

Author's Nationality or Domicile

Name of Country

OR { Citizen of USA

Domiciled in

Was This Author's Contribution to the Work

Anonymous? ☐ Yes ☒ NoPseudonymous? ☐ Yes ☒ No

If the answer to either of these questions is "Yes," see detailed instructions.

Nature of Authorship Check appropriate box(es). See instructions

☒ 3-Dimensional sculpture☐ Map☐ Technical drawing☐ 2-Dimensional artwork☐ Photograph☐ Text☐ Reproduction of work of art☐ Jewelry design☐ Architectural work

Name of Author ▼

b

Dates of Birth and Death

Year Born ▼

Year Died ▼

Was this contribution to the work a "work made for hire"?

☐ Yes☐ No

Author's Nationality or Domicile

Name of Country

OR { Citizen of

Domiciled in

Was This Author's Contribution to the Work

Anonymous? ☐ Yes ☐ NoPseudonymous? ☐ Yes ☐ No

If the answer to either of these questions is "Yes," see detailed instructions.

Nature of Authorship Check appropriate box(es). See instructions

☐ 3-Dimensional sculpture☐ Map☐ Technical drawing☐ 2-Dimensional artwork☐ Photograph☐ Text☐ Reproduction of work of art☐ Jewelry design☐ Architectural work

3

Year in Which Creation of This Work Was

Completed

1999

This information must be given in all cases.

Date and Nation of First Publication of This Particular Work

Complete this information ONLY if this work has been published.

Month November

Day 15

Year 1999

Hong Kong

Nation

4

See instructions before completing this space.

COPYRIGHT CLAIMANT(S) Name and address must be given even if the claimant is the same as the author given in space 2. ▼

Dan-Dee International, Ltd.

106 Harbor Drive, Jersey City, NJ 07065

Transfer If the claimant(s) named here in space 4 is (are) different from the author(s) named in space 2, give a brief statement of how the claimant(s) obtained ownership of the copyright. ▼

APPLICATION RECEIVED

ONE DEPOSIT RECEIVED

TWO DEPOSITS RECEIVED

FUNDS RECEIVED

DO NOT WRITE HERE OFFICE USE ONLY

MORE ON BACK ►

• Complete all applicable spaces (numbers 5-9) on the reverse side of this page.
• See detailed instructions. • Sign the form at line 8.

DO NOT WRITE HERE

Page 1 of _____ pages

Exhibit 3





Exhibit 4

